

Honorable John C. Coughenour

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

SECURITIES AND EXCHANGE COMMISSION,

Case No. C03-2646C

Plaintiff,

STIPULATED MOTION TO AMEND FINAL
JUDGMENT AS TO MICHAEL MCCALL

v.

**NOTED ON MOTION CALENDAR:
December 9, 2009**

TERRY RICHARD MARTIN, SILVER LEGACY
CORPORATION, SILVER SOUND LLC, JONAS
DAVID MCCALL, MICHAEL W. MCCALL,
CHARLES J. TULL, IBIS SECURITIES LLC,
KENNETH R. MARTIN, GEORGE TAMURA,
GOLDMAN SIG INC., EDWARD L. TEZAK,
SIGNAL MORTGAGE, INC., and JOHN H.
WHITE,

Defendants.

Plaintiff Securities and Exchange Commission (the "Commission") and Defendant Michael McCall ("McCall" or "Defendant") respectfully request that the Court amend its Final Judgment as to Defendant Michael McCall ("Final Judgment"). *See* Docket Item 190. As set forth below, the purpose of the requested amendment is to clarify the relief awarded against Mr. McCall, so that it conforms to the relief to which Mr. McCall previously consented.

On October 30, 2009, the Commission filed an Offer of Judgment as to Mr. McCall (the "Offer"). *See* Docket Item 186. In the Offer, Mr. McCall consented to the issuance of a Court order in the form attached thereto as Exhibit 1. In particular, Mr. McCall consented to the issuance of a Court order that: (a) enjoined him from further violations of Section 10(b) of the Securities Exchange Act of 1934 and Section 17(a) of the Exchange Act of 1933; (b) imposed disgorgement of \$45,000; (c) waived all but \$10,000 of the disgorgement, and declined to

1 impose a penalty, based on Mr. McCall's inability to pay, as shown in financial statements
 2 submitted to the Commission; and (d) set forth a payment schedule for the payment of the
 3 \$10,000 in disgorgement.

4 On November 19, 2009, the Court entered a Final Judgment as to Defendant Michael
 5 McCall. The Final Judgment provides for all of the injunctive relief to which Mr. McCall
 6 consented in the Offer, and also imposes disgorgement of \$45,000. However, the Final
 7 Judgment does not state that all but \$10,000 of the disgorgement is waived. Instead, the Final
 8 Judgment states as follows:

9 Based on Defendant's statement of financial condition submitted July 15,
 10 2009, the Court hereby ORDERS that the Defendant need pay a civil
 11 penalty in the amount of \$10,000, according to the payment schedule and
 12 conditions below. This determination is contingent upon the accuracy and
 13 completeness of the statement of financial condition. If Plaintiff obtains
 14 information indicating that Defendant's statements were inaccurate or
 15 incomplete when made, Plaintiff may petition this Court for the maximum
 16 penalty allowable under law.

17 See Docket Item 190, at 2:3-8.

18 The following paragraph of the Final Judgment then sets forth a payment schedule
 19 for "\$10,000 in disgorgement." See Docket Item 190 at 2:13.

20 Accordingly, in order to clarify the Final Judgment and conform it to the relief to
 21 which Mr. McCall previously consented, the Commission and Mr. McCall jointly request
 22 that the Court amend the Final Judgment, replacing the current text at 2:3-8 (cited above),
 23 with the following:

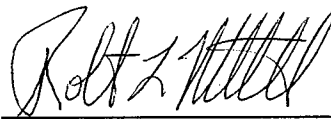
24 Based on Defendant's statement of financial condition submitted July 15,
 25 2009, the Court hereby waives all but \$10,000 of the disgorgement and
 26 declines to impose a civil penalty. Defendant shall pay \$10,000 in
 27 disgorgement according to the payment schedule and conditions below.

28 The determination to waive all but \$10,000 of the disgorgement and to

1 decline to impose a civil penalty is contingent upon the accuracy and
2 completeness of the statement of financial condition. If Plaintiff obtains
3 information indicating that Defendant's statements were inaccurate or
4 incomplete when made, Plaintiff may petition this Court to impose full
5 disgorgement of \$45,000, as well as the maximum penalty allowable under
6 law.

7 A proposed form of amended order is submitted herewith.

8
9 Respectfully submitted,

10 

11 Dated: December 9, 2009

12 Robert L. Mitchell
13 Attorney for Plaintiff
14 Securities and Exchange Commission
15 44 Montgomery Street, 26th Floor
16 San Francisco, California 94104
17 (415) 705-2500

18 Dated: December __, 2009

19 Earl Sutherland
20 Attorney for Defendant Michael McCall
21 REED MCCLURE
22 Two Union Square
23 601 Union Street
24 Suite 1500
25 Seattle, WA 98101-1363
26 (206) 292-4900

1 decline to impose a civil penalty is contingent upon the accuracy and
2 completeness of the statement of financial condition. If Plaintiff obtains
3 information indicating that Defendant's statements were inaccurate or
4 incomplete when made, Plaintiff may petition this Court to impose full
5 disgorgement of \$45,000, as well as the maximum penalty allowable under
6 law.

7 A proposed form of amended order is submitted herewith.

8
9 Respectfully submitted,

10
11 Dated: December __, 2009

12 Robert L. Mitchell
13 Attorney for Plaintiff
14 Securities and Exchange Commission
15 44 Montgomery Street, 26th Floor
16 San Francisco, California 94104
17 (415) 705-2500

18 Dated: December *9th*, 2009

19 Earl Sutherland
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